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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,184	11/25/2003	Jeffrey O. Phillips	03207556	7922

26565 7590 03/15/2010

MAYER BROWN LLP
P.O. BOX 2828
CHICAGO, IL 60690

EXAMINER	
CHANG, CELIA C	

ART UNIT	PAPER NUMBER
1625	

NOTIFICATION DATE	DELIVERY MODE
03/15/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ipdocket@mayerbrown.com

Office Action Summary	Application No.	Applicant(s)	
	10/722,184	PHILLIPS, JEFFREY O.	
	Examiner	Art Unit	
	Celia Chang	1625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *14 December 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *219-328* is/are pending in the application.

4a) Of the above claim(s) *219-272* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *273-328* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/GB/08) Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. The claims submitted by applicants dated Oct. 8, 2009 were noncompliant and not entered.

Amendment and response filed by applicants dated Dec. 14, 2009 have been entered and considered carefully.

Claims 1-218 have been canceled. Claims 219-328 are pending. Claims 219-272 being drawn to the non-elected invention, stayed withdrawn per 37 CFR 1.142(b). Claims 273-328 are continuously prosecuted.

2. The rejection of claims 151, 156, 158, 160-161, 167-170, 175-181, 183, 185-210 are moot in view of the cancellation of the claims.

3. Claims 273-328 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over issued claims of U.S. Patent No. 6,689,885; 6,645,988; 6,489,346; 5,840,737 or 7,399,772. Or claims 273-328 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting over copending claims of SN 10/418,410 or SN 10/898,135. Although the conflicting claims are not identical, they are not patentably distinct from each other because the difference between the instant claims and the composition of the issued patents is the inclusion of a thickening agent in the instant composition. Adding thickening agent is routine practice in pharmaceutical formulation, thus, is prima facie obvious over the issued claims in absent of unexpected result. The difference between the instant claims and the copending claims of 10/898,135 is instead of thickening agent, the copending claims must contain a disintegrant. Thickening agent or disintegrant are optional routine addition to a pharmaceutical composition, thus, the effective dose and stabilization agent are identical in the instant and copending claims only differ in the optional routine agent of disintegrant or thickening agent which are routine non-active optional carriers prima facie obviously encompassed by the scope of "*comprising*".

The instant composition claims and the process of using the basic composition for treatment of gastric acid disorder claims of the issued patents or pending claims, although the

conflicting claims are not identical, they are not patentably distinct from each other because the instant claims are drawn to material being used in the issued claims or copending claims. The material and method of using the exact same material should be bind together to prevent unreasonable multiple harassment based on the decision of In re Ochai. This is a provisional obviousness-type double patenting rejection over the pending application 10/418,410, because the conflicting claims have not in fact been patented.

Applicants provided statement that applicants will consider submitting a terminal disclaimer but without providing such disclaimer.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. The same rejection of the previous office action are being made with respect to the newly added claims which are essentially the same subject matter of the canceled, elected claims 151, 156, 158, 160-161, 167-170, 175-181, 183, 185-210. Therefore, **THIS ACTION IS MADE FINAL.**

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the

THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Celia Chang, Ph. D. whose telephone number is 571-272-0679. The examiner can normally be reached on Monday through Thursday from 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janet L. Andres, Ph. D., can be reached on 571-272-0867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

OACS/Chang
Mar. 10, 2010

/Celia Chang/
Primary Examiner
Art Unit 1625